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Attorney Code: 141

Our File No. 5574-pending

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
NOV 19 2007
77-19-07
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

IRENE HERNANDEZ, Special Administrator,)
Of the Estate of IGNACIO G. OCHOA, deceased,)

Plaintiff,)

v.)

CITY OF OAK FOREST, ILLINOIS and)
AS YET UNNAMED DEFENDANTS,)

Defendants.)

No. 2007 L 009480

07CV6542

JUDGE GOTTSCHALL

MAGISTRATE JUDGE ASHMAN

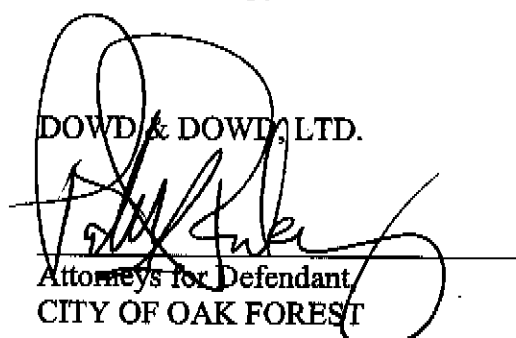
NOTICE OF FILING

TO: David A. Cerda
333 West Wacker Dr., Suite 500
Chicago, IL 60606

PLEASE TAKE NOTICE that I have caused to be filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, on the 19th day of November 2007, Defendants' Petition for Removal, a copy of which is attached hereto and hereby served upon you.

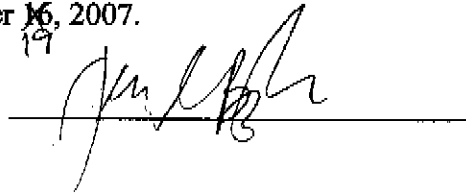
DOWD & DOWD, LTD.

By:

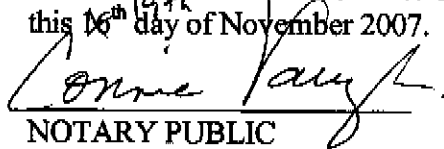

Attorneys for Defendant
CITY OF OAK FOREST

CERTIFICATE OF SERVICE

I, an attorney, state that a copy of the attached above-named document required to be served by Fed.R.Civ.P. 5(a) has been served to the above mentioned attorney as addressed by via First Class Mail on November ~~16~~¹⁹, 2007.

A handwritten signature in black ink, appearing to be "J. M. [unclear]", is written over a horizontal line.

SUBSCRIBED and SWORN to before me
this 16th day of November 2007.

A handwritten signature in black ink, appearing to be "Conne [unclear]", is written over a horizontal line.
NOTARY PUBLIC

PJR/tab

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v.)

CITY OF OAK FOREST, ILLINOIS and)
AS YET UNNAMED DEFENDANTS,)

Defendants.)

No. 2007 L 009480

07CV6542

JUDGE GOTTSCHALL

MAGISTRATE JUDGE ASHMAN

DEFENDANT'S PETITION TO REMOVE TO FEDERAL COURT

NOW COMES the Defendant, CITY OF OAK FOREST, by and through its attorneys, Dowd & Dowd, Ltd., and pursuant to 28 U.S.C. §1441(a)-(b), submits its petition pursuant to 28 U.S.C. §1446(a)-(d), for removal of the action formerly pending in the Circuit Court of Cook County, Illinois entitled *Irene Hernandez, et al v. City of Oak Forest, et al.*, 2007 L 009480, to the United States District Court for the Northern District of Illinois, Eastern Division. For its petition, the Defendant states as follows:

1. On September 7, 2002, Irene Hernandez, as Special Administrator of the Estate of Ignacio G. Ochoa, deceased, filed this lawsuit against the City of Oak Forest in the Circuit Court of Cook County (A copy of the summons and complaint at law are attached hereto as Exhibits A and B, respectively).

2. The summons was placed on October 30, 2007 and was served on the Village on November 7, 2007 (See Exhibits A and B).

3. The plaintiff's complaint comprises three counts. Count I is brought pursuant to the Illinois Wrongful Death Act, while Count II purports to allege a survival action.

4. Under Count III, the plaintiff invokes 42 U.S.C. Section 1983 and alleges that the city, through its employees and agents, was deliberately indifferent to the decedent's "urgent need for medical attention" and by virtue of that indifference, violated the decedent's rights under the United States Constitution (See Count III, paragraph 15 of the complaint).

5. Inasmuch as Count III appears to arise under the constitution of laws of the United States, this court has subject matter jurisdiction over that count pursuant to 28 U.S.C. Section 1331.

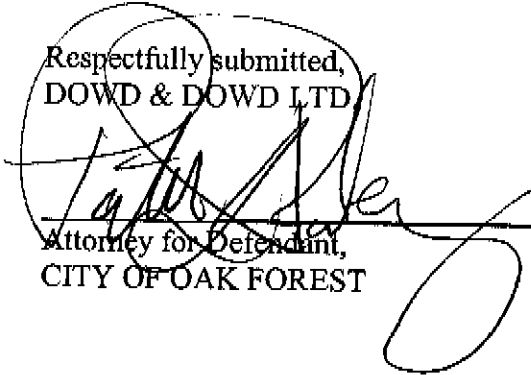
6. Counts I and II share with Count III a "common nucleus of operative fact" (See Banks v. Chicago Board of Education, 890 F.Supp.206, 208 (N.D.Ill.1995) citing United Mine Workers of America v. Gibbs, 383 U.S. 715, 725 (1966)). The Illinois state claims asserted in Counts II, III and IV are so related to the federal claims that they form part of the same case for controversy defined under Article 3 of the United States Constitution. Therefore, this court has subject matter jurisdiction over these counts pursuant to 28 U.S.C. Section 1367(a).

7. The undersigned has been retained to represent the City of Oak Forest.

8. Oak Forest, Illinois lies within the judicial district of the United States District Court for the Northern District of Illinois, Eastern Division. Accordingly, venue in this court is proper under 28 U.S.C. Section 1441(a).

9. This action was filed on September 7, 2007 and was served on the City on November 7, 2007. As a result, the petition for removal is timely under 42 U.S.C. Section 1446(b).

WHEREFORE, the City of Oak Forest prays that this matter be removed from the Circuit Court of Cook County to the United States District Court for the Northern District of Illinois, Eastern Division, pursuant to 28 U.S.C. Section 1441(a)(b) and Section 1446(a)-(d).

Respectfully submitted,
DOWD & DOWD LTD.
By: 
Attorney for Defendant,
CITY OF OAK FOREST

Patrick J. Ruberry
Dowd & Dowd, Ltd.
617 West Fulton Street
Chicago, IL 60661
Tele: (312) 704-4400
Fax: (312) 704-4500

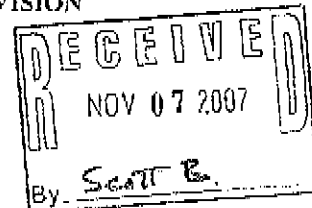
2120 - Served 2121 - Served
2220 - Not Served 2221 - Not Served
2320 - Served By Mail 2321 - Served By Mail
2420 - Served By Publication 2421 - Served By Publication
SUMMONS ALIAS - SUMMONS CCG N001-10M-1-07-05 ()

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

(Name all parties)
IRENE HERNANDEZ, Special Administrator of the Estate of
IGNACIO G. OCHOA, deceased

v.
CITY OF OAK FOREST, ILLINOIS and
AS YET UNNAMED DEFENDANTS

SUMMONS



No. 2007 L 009480

City of Oak Forest, Illinois
c/o City Clerk
City Clerk's Office
15440 South Central Avenue
Oak Forest, Illinois 60452

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

- ☒ Richard J. Daley Center, 50 W. Washington, Room 801, Chicago, Illinois 60602
- | | | |
|--|---|---|
| <input type="checkbox"/> District 2 - Skokie
5600 Old Orchard Rd.
Skokie, IL 60077 | <input type="checkbox"/> District 3 - Rolling Meadows
2121 Euclid
Rolling Meadows, IL 60008 | <input type="checkbox"/> District 4 - Maywood
1500 Maybrook Ave.
Maywood, IL 60153 |
| <input type="checkbox"/> District 5 - Bridgeview
10220 S. 76th Ave.
Bridgeview, IL 60455 | <input type="checkbox"/> District 6 - Markham
16501 S. Kedzie Pkwy.
Markham, IL 60426 | <input type="checkbox"/> Child Support
28 North Clark St., Room 200
Chicago, Illinois 60602 |

You must file within 30 days after service of this Summons, not counting the day of service.
IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: 34093

Name: David A. Cerda

Atty. for: Plaintiff

Address: 333 West Wacker Drive, Suite 500

City/State/Zip: Chicago, Illinois 60606-1225

Telephone: (312) 223-9890

Service by Facsimile Transmission will be accepted at:

WITNESS, _____

Clerk of Court

Date of service: _____

(To be inserted by officer on copy left with defendant or other person)

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

DEFENDANT'S
EXHIBIT

A

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2120 - Served 2121 - Served
2220 - Not Served 2221 - Not Served
2320 - Served By Mail 2321 - Served By Mail
2420 - Served By Publication 2421 - Served By Publication
SUMMONS ALIAS - SUMMONS

CCG N001-10M-1-07-05 ()

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

(Name all parties)

IRENE HERNANDEZ, Special Administrator of the Estate of
IGNACIO G. OCHOA, deceased

v.

CITY OF OAK FOREST, ILLINOIS and
AS YET UNNAMED DEFENDANTS

No. 2007-L-009480

City of Oak Forest, Illinois
c/o City Clerk
City Clerk's Office
15440 South Central Avenue
Oak Forest, Illinois 60452

SUMMONS

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2121 Euclid
Rolling Meadows, IL 60008
- ☐ District 4 - Maywood
1500 Maybrook Ave.
Maywood, IL 60153
- ☐ District 5 - Bridgeview
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Chicago, Illinois 60602

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City/State/Zip: Chicago, Illinois 60606-1225

Telephone: (312) 223-9890

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WITNESS, _____

OCT 30 2007

Clerk of Court

Date of service: _____
(To be inserted by officer on copy left with defendant or other person)

(Area Code) (Facsimile Telephone Number)

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

DOROTHY
CLERK OF CIR

SEA

72 Received on 11/19/2007 7:55:47 AM [US Mountain Standard Time]

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

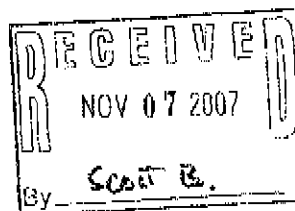
IRENE HERNANDEZ,
Special Administrator of the Estate of
IGNACIO G. OCHOA, deceased,

Plaintiffs,

v.

CITY OF OAK FOREST, ILLINOIS and
AS YET UNNAMED DEFENDANTS,

Defendants.



No.

COMPLAINT AT LAW

Plaintiff, Irene Hernandez, Special Administrator of the Estate of Ignacio G. Ochoa, deceased, by and through his attorney, David A. Cerda, for their complaint against the City of Oak Forest, Illinois and as yet unnamed defendants, states:

COUNT I - WRONGFUL DEATH

Plaintiff, Irene Hernandez, Special Administrator of the Estate of Ignacio G. Ochoa, deceased, states:

1. Irene Hernandez is the duly appointed Special Administrator of the Estate of Ignacio G. Ochoa, deceased. The City of Oak Forest, Illinois is an Illinois municipality. As yet unknown defendants are police officers and/or lockup keepers who were employees or agents of the City of Oak Forest and acted under color of law at all pertinent times herein.
2. The plaintiff's decedent Ignacio G. Ochoa was a resident of the Oak Forest, Illinois and was born on September 22, 1952.
3. On September 7, 2006, Ignacio G. Ochoa and his son Miguel Ochoa were arrested by City of Oak Forest, Illinois police officers and taken to the Oak Forest Police Station.
4. At the time, Ignacio G. Ochoa was suffering from a heart condition and undergone heart surgery. While in custody at the Oak Forest Police Station, he informed police and/or lockup



keepers that he was suffering chest pains and requested medial attention. He also showed to police personnel and/or lockup keepers documents from his wallet which showed that he had a heart condition.

5. At said place and time, police personnel and/or lockup keepers asked Miguel Ochoa whether his father's heart condition was serious. Miguel said that it was.

6. At said place and time, paramedics for the City of Oak Forest were housed and working in the same building as the Oak Forest Police Station.

7. Despite the fact that Ignacio G. Ochoa requested medical attention for his heart condition, provided documentation of his medical condition, and his son attested to his medical condition, and medical personnel were nearby, City of Oak Forest police personnel and/or lockup keepers did not call for medical assistance while Ignacio G. Ochoa complained of chest pains.

9. Thereafter, Ignacio G. Ochoa suffered a heart attack in police custody and died on September 11, 2006, as a direct and proximate result of the willful and wanton disregard of his request for medical attention.

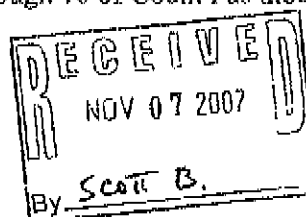
10. Ignacio G. Ochoa is survived by Irene Hernandez, his daughter, Miguel Ochoa, his son, and Jennifer Ochoa, his daughter.

WHEREFORE, plaintiff Irene Hernandez, Special Administrator of the Ignacio G. Ochoa, deceased, prays for judgment in her favor in an amount in excess of the jurisdictional limits of the Law Division of this Court.

COUNT II - SURVIVAL

Plaintiff, Irene Hernandez, Special Administrator of the Estate of Ignacio G. Ochoa, deceased, states:

11. Plaintiff repeats and realleges paragraphs 1 through 10 of Count I as though set forth verbatim herein.



12. As a direct and proximate result of one or more of the foregoing willful and wanton acts or omissions of the defendants, Ignacio G. Ochoa was subjected to and endured horrible and agonizing pain, suffering and disability.

WHEREFORE, plaintiff Irene Hernandez, Special Administrator of the Estate of Ignacio G. Ochoa, deceased, prays for judgment in her favor in an amount in excess of the jurisdictional limits of the Law Division of this Court.

COUNT III - 42 U.S.C. § 1983

Plaintiff, Irene Hernandez, Special Administrator of the Estate of Ignacio Hernandez, deceased, states:

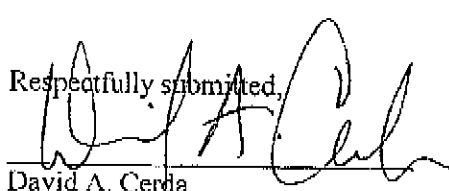
13. Plaintiff repeats and realleges paragraphs 1 through 10 of Count I as though set forth verbatim herein.

14. At all pertinent times herein, as yet unknown defendants were acting as employees and/or agents of the City of Oak Forest, Illinois and acted under color of law.

15. By being deliberately indifferent to Ignacio Ochoa's urgent need for medical attention, as yet known defendants violated his rights under the United States Constitution.

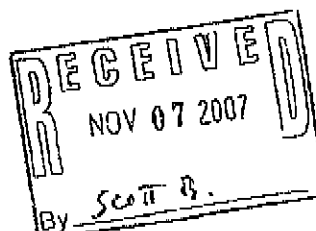
WHEREFORE, plaintiff Irene Hernandez, Special Administrator of the Estate of Ignacio G. Ochoa, deceased, prays for judgment in her favor, and for reasonable attorney's fees, costs, and expenses in bringing this lawsuit.

Respectfully submitted,


David A. Cerda

David A. Cerda
333 West Wacker Drive, Suite 500
Chicago, Illinois 60606
(312) 223-9890
E-mail: dcerda@cerdalaw.com

Attorney No. 34093



1 of 72 Received on 11/19/2007 7:55:47 AM [US Mountain Standard Time]